

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton; and
Tony Hammond

Regulations to Revise Procedures
for the Freedom of Information Act

Docket No. RM2017-2

NOTICE OF PROPOSED RULEMAKING TO REVISE
PROCEDURES FOR THE FREEDOM OF INFORMATION ACT

(Issued December 19, 2016)

I. INTRODUCTION

The Postal Regulatory Commission (the Commission) proposes to revise its rules governing requests for agency records made under the Freedom of Information Act (FOIA), 5 U.S.C. 552, in accordance with the FOIA Improvement Act of 2016 (the Act), Pub. L. No. 114-185, 130 Stat. 538. Pursuant to section 3(a) of the Act, the head of each agency “shall review the regulations of such agency and shall issue regulations on procedures for the disclosure of records under [FOIA]” to implement the Act within 180 days of its enactment date. The Commission hereby provides this notice, in conformance with the Act’s deadline, describing its proposed changes and eliciting public comment.

II. BACKGROUND

The Act was signed into law on June 30, 2016, and mandates that federal agencies review and revise their regulations by December 27, 2016. Among other things, the Act expands the dispute resolution process available to requesters, limits the use of FOIA exemptions, and codifies the so-called “Rule of 3” for frequently requested records. In order to implement the Act, the Commission must modify its FOIA regulations, which are set out in 39 CFR part 3004. The proposed modifications are set forth below, along with a brief description of the included changes.

III. PROPOSED RULES

The rules requiring changes in this notice of proposed rulemaking, pursuant to the Act, are §§ 3004.2, 3004.9, 3004.11, 3004.13, 3004.43, and 3004.52.

Proposed § 3004.2 adds the duty to identify and post frequently requested records. Additionally, the modified rule limits the Commission’s use of FOIA exemptions. Under the revised section, the Commission will only withhold information if it “reasonably foresees” that disclosure will harm an interest protected by an exemption or disclosure is otherwise prohibited by law.

Proposed § 3004.9 describes how to file a FOIA request. This section is a summary of basic information, added for clarity purposes.

Proposed § 3004.11 applies a 25-year sunset provision to the deliberative process privilege, which exempts certain inter-agency and intra-agency memoranda and letters from FOIA. Under the new rule, the deliberative process privilege does not apply to records created 25 years or more before a records request.

Proposed § 3004.13 specifies that frequently requested records will be posted on the Commission’s website.

Proposed § 3004.43 states that the Commission will offer the services of its FOIA Public Liaison to assist the requester and to provide dispute resolution services if necessary.

Proposed § 3004.52 revises the Commission's rules for collecting fees when the Commission cannot issue its response during the initial 20-day response period.

IV. COMMENTS REQUESTED

Interested persons are invited to provide written comments concerning the proposed rule. Comments are due no later than 30 days after the date of publication of this notice in the *Federal Register*. All comments and suggestions received will be available for review on the Commission's website, <http://www.prc.gov>.

Pursuant to 39 U.S.C. 505, Laura Zuber is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in the above-captioned docket.

V. ORDERING PARAGRAPHS

It is ordered:

1. Docket No. RM2017-2 is established for the purpose of amending the Commission's rules governing the Freedom of Information Act.
2. Pursuant to 39 U.S.C. 505, Laura Zuber is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.
3. Interested persons may submit initial comments no later than 30 days from the date of publication of this notice in the *Federal Register*.

4. The Secretary shall arrange for publication of this Order in the *Federal Register*.

By the Commission.

Stacy L. Ruble
Secretary

List of Subjects

39 CFR Part 3004

Administrative practice and procedure, Freedom of information, Reporting and recordkeeping requirements

For the reasons stated in the preamble, the Commission proposes to amend chapter III of title 39 of the Code of Federal Regulations as follows:

Part 3004—PUBLIC RECORDS AND FREEDOM OF INFORMATION ACT

1. The authority citation for part 3004 continues to read as follows:

Authority: 5 U.S.C. 552; 39 U.S.C. 503.

2. Revise § 3004.2 to read as follows:

§ 3004.2 Presumption of openness.

(a) The Commission shall be proactive and timely in identifying and posting public records and other frequently requested records to its Web site.

(b) It is the stated policy of the Commission that FOIA requests shall be administered with a clear presumption of openness. The Commission will only withhold information only if it reasonably foresees that disclosure would harm an interest protected by a FOIA exemption, as enumerated in § 3004.11, or disclosure is otherwise prohibited by law.

3. Add § 3004.9 to read as follows:

§ 3004.9 How to make a request.

(a) To request Commission records, please contact the Secretary of the Commission via letter, telephone, or use the online request form provided on the Commission's Web site at <http://www.prc.gov/foia/>.

(b) Requests must describe the records sought in sufficient detail to enable the Commission to locate them with a reasonable amount of effort. To the extent possible, please provide any specific information that might assist the Commission in responding to the request.

(c) Requesters must provide contact information to assist the Commission in communicating with them and providing Commission records.

4. Amend § 3004.11 by revising paragraph (f) to read as follows:

§ 3004.11 Use of exemptions.

* * * * *

(f) Inter-agency or intra-agency memoranda or letters that would not be available by law to a party other than an agency in litigation with the agency, provided that the deliberative process privilege shall not apply to records created 25 years or more before the date on which the records were requested.

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5. Amend § 3004.13 by revising paragraph (a) to read as follows:

§ 3004.13 Notice and publication of public information.

(a) Decisions, advisory opinions, orders, public reports, and frequently requested agency records will be made available to the public by posting on the Commission's Web site at <http://www.prc.gov>.

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6. Amend § 3004.43 by revising paragraph (a) and adding paragraph (d)(4) to read as follows:

§ 3004.43 Response to requests.

(a) Within 20 days (excluding Saturdays, Sundays and legal holidays) after receipt of a request for a Commission record, the Secretary or Assistant Secretary will notify the requester of its determination to grant or deny the request and the right to seek assistance from the Commission's FOIA Public Liaison.

* * * * *

(d) * * *

(4) The right to seek dispute resolution services from the Commission's FOIA Public Liaison or the Office of Government Information Services.

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7. Revise § 3004.45 to read as follows:

§ 3004.45 Extension of response time limit.

(a) The Commission may extend the time limit for a response to a request or appeal for up to 10 business days due to unusual circumstances, as specified in 5 U.S.C. 552(a)(6)(B)(iii). In such a case, the Commission will notify the requester in writing of the unusual circumstance causing the extension and the date by which the Commission estimates that the request can be processed.

(b) If an extension will exceed 10 business days, the Commission will:

(1) Provide the requester with an opportunity to limit the scope of the request or to arrange an alternative timeframe for processing the request or a modified request. The applicable time limits are not tolled while the Commission waits for a response from the requester under this subsection; and

(2) Make its FOIA Public Liaison available to the requester and apprise the requester of their right to seek dispute resolution services from the Office of Government Information Services.

8. Amend § 3004.52 by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 3004.52 Fees—general provisions.

* * * * *

(e) No requester will be charged a fee after any search or response which occurs after the applicable time limits as described in §§ 3004.43 and 3004.44, unless:

(1) The Commission extends the time limit for its response due to unusual circumstances, pursuant to § 3004.45(a), and the Commission completes its response within the extension of time provided under that section; or

(2) The Commission extends the time limit for its response due to unusual circumstances, pursuant to § 3004.45(a), and more than 5,000 pages are necessary to respond to the request and the Commission has discussed with the requester how they could effectively limit the scope of the request or made at least three good faith attempts to do so; or

(3) A court has determined that exceptional circumstances exist and excused the Commission from responding by court order.

(f) The Commission may, however, charge fees for a partial grant of a request while it reviews records that may be exempt and may be responsive to the request, if it is made within the applicable time limits.